IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1539 OF 2004

Hotel Sagar ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mr.Rajiv Patil with Mr.Chetan K.Pendse for Petitioner.

Mr.P.R.Namjoshi with Mr.K.V.Saste, A.P.P. for Respondent No.1.

Ms.Jyoti Chavan for Respondents 2 to 6.

Mr.Kirit Hakani for Respondent No.7.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 1, 2004.

P.C.

1. Heard Counsel for the parties. Mr.Patil for the Petitioner contends that the Petitioner is entitled to occupy the premises in question in his own rights. He, however, submits that assuming that it is inappropriate to consider the rights of

the parties in the present proceedings, that too, at this stage, the Petitioner can at least be permitted to use the subject premises on such terms and conditions, as the Court may impose in that behalf. Such user by the Petitioner will not be construed as creation of any right, title or interest in respect of the subject premises nor as accepting his contention that the tenancy in favour of Respondents 2 to 6 has been surrendered or for that matter, came to end by efflux of time.

2. Mr.Namjoshi for Respondent No.1, on the other hand, submits that if the Court is inclined to accept the alternative submission made on behalf of the Petitioner, in that case, it should be made clear that the Petitioner shall not create any third party right, title or interest or alter the position of the subject premises in any manner whatsoever and further undertake to this Court that he will hand over vacant and peaceful possession of the subject premises on ‘as is where is’ basis when the possession has been taken over by the Petitioner, while returning the same in terms of further orders to be passed by the Court.

Mr.Namjoshi for Respondent No.1 has invited my attention to the fact, which is conceded by the Respondent No.7 in Para 6 of the affidavit filed before the lower Court to the effect that the Liquidator has no machinery or resource to take safety measures of the premises, for which reason, the property should be continued to remain in possession of the police authorities, which is one of the Government Agency/Branch of Government like the Liquidator. Mr.Hakani for Respondent No.7, however, submits on instructions that he is willing to take possession of the subject premises within three weeks from today.

3. Having considered the rival submissions, without going into the controversy regarding right, title or interest of the Petitioner on the one hand, and Respondents 2 to 6 on the other, or the Respondent No.7 with regard to the subject premises, the appropriate course, during the pendency of the proceedings before the Trial Court, to my mind, is to permit user of the premises so as to ensure that the premises are maintained properly. As the Petitioner has shown willingness

to accept possession on such terms and conditions as may be imposed by this Court, at the same time, the Respondent No.7 has also shown interest in taking possession, though he has not done so since 1998, the following order will meet the ends of justice :

(a) The Respondent No.7 may take possession of the subject premises within two weeks from today, failing which, the Petitioner may approach the Respondent No.1 for handing over the possession thereof to the Petitioner. If such request is made, the Respondent No.1 may hand over possession of the subject premises to the Petitioner.

(b) In either case, i.e. whether the Respondent No.7 or the Petitioner takes over possession of the premises, they will have to give undertaking before this Court that they will not claim any right, title or interest in the subject premises in any manner whatsoever nor shall they create

any third party rights therein or part with possession in any manner thereof to third party.

(c) Besides, the undertaking will record that they shall hand over vacant and peaceful possession of the subject premises on ‘as is where is’ basis when the possession of the premises has been made over to them at the time of returning possession of the premises, pursuant to the order to be passed by the Trial Court in that behalf.

(d) The undertaking shall remain in force till the disposal of the trial or such other time, as the Trial Court may notify.

(e) The undertaking shall also record that after taking possession, the premises will be maintained properly and necessary repairs will be carried out within reasonable time, entirely at the risk, cost and consequences of the person taking

possession of the subject premises under this order and no equities shall be claimed by the said person.

(f) It is also made clear that the person, who takes possession, shall pay monthly outgoings from the date of taking possession.

. Application disposed of on the above terms.

. All concerned to act on the ordinary copy of this order, duly authenticated as true copy by the Office.

A.M.KHANWILKAR, J.